IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 10029 of 2007
Date of decision: 20 July, 2007

Ravinder Sharma and others ...Petitioners

Versus

Union of India and another ...Respondents.

CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL
HON'BLE MR. JUSTICE S.N. AGGARWAL

Present: Mr. Amit Jhanji, Advocate with
Mr. Vivek Sharma, Advocate,
for the petitioners.

Mr. R.P. Verma, Advocate, for
Mr. Rajiv Sharma, Advocate, for
respondent No.1.

Mr. Girish Agnihotri, Senior Advocate with
Mr. Vijay Pal, Advocate, for respondent No.2.

K.S.GAREWAL, J.

Ravinder Sharma and 17 others are employed as Personal Assistants in the Post Graduate Institute of Medical Education and Research (hereinafter referred to as **the Institute**). They have filed this petition to challenge the notice issued by the Institute on May 17, 2007 (Annexure P/8) as 12 posts of Private Secretary in the Institute are to be filled through a limited departmental competitive examination and short hand test scheduled

for July 23, 2007.

According to the petitioners, their services were earlier governed by the Post Graduate Institute of Medical Education and Research Recruitment Rules, 1970 (hereinafter referred to as **1970 Rules**), which required a Personal Assistant to have three years experience to be eligible for promotion to Private Secretary. These rules were repealed in 1982 and thereafter the Institute was making promotions of Personal Assistants solely on the basis of seniority. The Institute promoted 20 persons to Private Secretary on various dates between December 22, 1998 to August 26, 2002. However, it had been proposed as far back as in 1992 to amend the rules for recruitment to Private Secretary, 50% by promotion and 50% by conducting departmental examination. This had been done on the basis of Second Cadre Review Committee Report of All India Institute of Medical Sciences, New Delhi.

The ground for challenge which the learned counsel for the petitioners has urged is that the new 1992 Rules have never been notified. Section 31 of the Post Graduate Institute of Medical Education and Research Chandigarh Act 1966 empowers the Central Government to make rules to carry out the purposes of the Act. Under this provision the rules are framed to provide for the number of officers and employees that may be appointed by the Institute and the manner of such appointment. Section 31 (3) also lays down that every rule made under Section 31 shall be laid before each House of Parliament.

Reference was also made to Section 32 of the Act which empowered the Institute to make regulations with the previous approval of the Central Government.

The argument of the petitioner is that the rules on the basis of which promotion to the post of Private Secretary is being made have been validly promulgated under Sections 31 and 32 of the Act. Therefore, the old rules must continue and all vacancies of Private Secretary should be filled up only by promotion. The impugned notice dated May 17, 2007 being in violation of the Act and contrary the 1982 Rules deserves to be quashed.

Notice of motion was issued to the respondents. The respondents put in appearance and respondent 2 also filed the reply.

According to the Institute, Second Cadre Review Scheme was implemented by the Institute with effect from March 1, 1992 providing for the hierarchy in the Personnel Division as Stenographer, Personal Assistant, Private Secretary and Principal Private Secretary. The method of recruitment to fill up the vacancies of Private Secretaries was, 50% by promotion and 50% by limited departmental competitive examination. The examination was in two parts. First part was to consist written examination carrying 80% marks and qualifying short hand test in English/Hindi at 100 WPM. The second part consist of evaluation of ACRs. When these rules were circulated, Private Secretaries and Stenographers represented regarding the limited departmental competitive examination and their representation was considered in the light of clarification from AIIMS, whereafter the Governing Body/Institute Body decided on December 12, 2002 to modify the rules and deleted the provision regarding written test. Therefore, in the recruitment rules, the test was confined to qualifying short hand test only.

It was further pleaded that only 6 Personal Assistants, including the two petitioners 1 & 4 have not applied for the posts, whereas all others including the 18 petitioners have. In other words only 6 candidates including two petitioners consider themselves to be aggrieved. The rest of the petitioners are themselves candidates in the said limited departmental examination. They just want to jeopardize the career of genuinely efficient and diligent candidates. Basically, the petitioners are afraid of better and harder working colleagues who have knowledges of rules and regulations. These candidates can be an asset to the Institute for furtherance of its aims and objectives. As such, the act of the respondent Institute in following the present recruitment rule is just, lawful and equitable. It has also been stated in the reply that the Institute was an autonomous body and the correct position of the Rules and Regulation of the Institute was that Regulation 32 provided that age, experience and other qualifications for appointment to a post shall be as specified by the Institute. This naturally meant that the Institute was competent to specify the qualification for the post and it did not need any rules to be drafted, amended or notified.

In support of his arguments, the learned counsel for the petitioners cited **Union of India through Govt. of Pondicherry and another** Versus **V. Ramakrishnan and others** (2005) 8 Supreme Court Cases 394, to argue that validly framed rules continue to operate until repealed or replaced by new validly framed rules. Draft rules framed during the operation of validly framed rules cannot be effective. Similar was the position in **Pardeep Kumar Thakur** Versus **Punjab Pollution Control Board, Patiala** 1997 (4) Service Cases Today 345. In **The State of**

Haryana versus **Shamsher Jang Shukla Clerk, Haryana Civil Secretariat** 1968 S.L.R. 162 the Court held that rules for providing a qualifying test have to be framed in accordance with the Act (State Reorganization Act, 1956 in the said case) to become enforceable.

We feel that the arguments of the learned counsel for the petitioners are not sustainable. The rulings cited by him are not applicable to a case covered by the Institute Act since Regulation 32 entitles the Institute to specify the qualification for appointment to a post. Regulation 32 is re-produced below for facility of reference.

> "**32. Qualification for appointment:-** (1) Age, experience and other qualifications for appointment to a post shall be as specified by the Institute keeping in view the qualifications and experience prescribed by the Central Government for similar posts before applications of candidates are called for subject to the condition that non-medical personnel shall not be appointed to the posts of Director and Medical Superintendent."

Therefore, the requirement of a qualifying short hand test mentioned in notice dated May 17, 2007 (Annexure P/8) is valid and is in accordance with what was approved by the Governing Body and Institute Body on December 12, 2002. The qualifying short hand test is strictly in accordance with the powers given to the Institute to specify the age, experience and other qualifications for appointment to a post. There is no requirement under the Act that such qualifications which have been specified under the Rules and Regulations of the Institute must necessarily be drafted as rules under Regulation 31 of the Act. Therefore, in order to become forceable, the Regulations are not required to be laid before each

House of the Parliament, as required by Section 31 (3) of the Act.

In our opinion, notice Annexure P/8 dated May 17, 2007 is perfectly valid and enforceable. We find no merit in this petition. Dismissed.

(K.S. GAREWAL)
JUDGE

July 2007 **(S.N. AGGARWAL)**
prem **JUDGE**

Pronounced on 20.7.2007